IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**
	:
vs.	**: No. CR-552-2014**
	:
THERIN POWELL,	**:**
Defendant	**: Omnibus Pretrial Motion**

*** * * * * * * * * * ***

COMMONWEALTH	**:**
	: No. CR-554-2014
vs.	**:**
	:
KASSHIAN ELLIOT	**: Motion to Suppress**

OPINION AND ORDER

Defendant Powell is charged by Information filed on April 17, 2014 with one count of possession with intent to deliver heroin, one count of criminal conspiracy to possess with intent to deliver heroin, one count of possession of heroin, one count of possession of drug paraphernalia and two traffic summaries.

Defendant Elliot is charged by Information filed on April 17, 2014 with one count of possession with intent to deliver heroin, one count of criminal conspiracy to possess with intent to deliver heroin, one count of possession of heroin and one count of possession of drug paraphernalia.

The Commonwealth filed a notice of joinder one day earlier on April 16, 2014.

Defendant Powell filed an omnibus pretrial motion on June 30, 2014, which consisted of a motion to suppress, a motion to disclose criminal history information, a motion

for Rule 404 (b) evidence, a motion for formal discovery and a motion to reserve right.

Defendant Elliot filed a motion to suppress on July 17, 2014.

While the initial hearings on the motions were scheduled for July 30, 2014 and August 15, 2014 respectively, due to various continuance requests, a consolidated hearing was not held until October 30, 2014.

The charges against both defendants arose out of a vehicle stop that was conducted on February 21, 2014 and the subsequent search of the defendants and the vehicle.

Defendant Powell asserts that he was operating the vehicle and that Defendant Elliot was the lone passenger. He claims that the stop of the vehicle, the subsequent frisk and then search of his person, and the further search of the vehicle were all unconstitutional. Defendant Elliot also alleges that the stop of the vehicle, the search of his person and the impoundment and search of the vehicle were all unconstitutional. Both defendants request that the court suppress all of the evidence seized from their person and the vehicle.

Officer William McGinnis of the South Williamsport Police Department was on duty in full uniform on February 21, 2014. He was on a "roving patrol" in a marked police unit.

At approximately 5:00 p.m., he was traveling northbound on Hastings Street in the borough and his attention was drawn to a dark-colored Kia that was immediately in front of him. While he was behind the Kia and both vehicles were stopped at a red light, he noticed that the interior rearview mirror of the vehicle was missing.

Based on provisions of the Vehicle Code as well as the pertinent regulations

concerning vehicle equipment,[1] Officer McGinnis effectuated a stop of the vehicle. He conceded that there was no other reason to stop the vehicle other than the missing rearview mirror and his opinion that the vehicle was not in compliance with the relevant laws and regulations.

After stopping the vehicle, Officer McGinnis approached it and observed that Defendant Powell was driving and Defendant Elliot was in the front passenger seat. He requested identification information from both individuals. A JNET search of Defendant Powell indicated that his license was suspended for, among other things, prior drug-related convictions. The JNET search with respect to Defendant Elliot indicated that he had previously been issued two licenses, one of which was suspended and one of which apparently was not suspended. As a result, Officer McGinnis advised both defendants that they were not permitted to operate the vehicle.

Officer McGinnis then indicated that he would need to contact the owner of the vehicle in order that someone could come and get it. Defendant Powell advised him that the owner was Ebony Connor. Defendant Powell provided Ms. Connor's telephone number.

Officer McGinnis called the telephone number and it was answered by an individual who claimed to be Ebony Connor. He asked her if she knew who was driving her vehicle and she acknowledged that it was Defendant Powell. She indicated that she had recent elbow surgery and that she had asked Mr. Powell to pick up a prescription for her at Rite-Aid on Third Street and he had not returned. She indicated further that she was "looking

[1] Officer McGinnis primarily relied on 75 Pa.C.S.A. §§ 4534 and 4704(a)(3)(ii) and 67 Pa.Code 175.68.

for them" because they had not returned.

Officer McGinnis' suspicions were peaked for several reasons. Defendant Powell said he was coming from Bloomsburg. The area where he was stopped was consistent with coming from Bloomsburg, not coming from the Third Street Rite-Aid. Based on Officer McGinniss' experience, Route 15 which travels from Route 80 to Williamsport is a "drug corridor." He was also concerned that the two defendants were in a vehicle which could possibly had been coming from the Philadelphia area, that one of the defendants had four prior drug convictions and that the vehicle did not belong to either of the defendants.

Because his suspicions were peaked, he asked Ms. Connor for her consent to search the vehicle. Because it was approximately 5:00 p.m. on a Friday evening and the traffic was extremely busy, Officer McGinnis called for backup. He was concerned for "officer safety purposes" and did not want to search the vehicle by himself. The fact of the four prior drug convictions also caused him to believe that one or both of the defendants could be armed and dangerous.

Officer Michael Samar also with the South Williamsport Police Department soon arrived as backup. Officer McGinnis approached Defendant Powell, advised him that he received consent to search the vehicle and then directed Mr. Powell to exit the vehicle.

He immediately conducted a pat-down of Defendant Powell for "officer safety." He conceded that there was nothing to indicate that Defendant Powell was armed but he did not know if Defendant Powell had anything concealed.

However, he also referenced 75 Pa.C.S.A. §§ 4103, 4521, 4524 and 6103, as well as 67 Pa.Code §175.80.

During the pat-down while feeling the area of Defendant Powell's groin, he felt a lump that was not supposed to be there. It "felt like it was packaged narcotics." He knew it was not a gun but he was fairly certain it was drugs based upon his training and experience.

Officer McGinnis decided to place Defendant Powell in custody and began securing his hands behind him with handcuffs. While placing Defendant Powell in handcuffs, Officer McGinnis heard Officer Samar state that Defendant Elliot had made a furtive movement and either had a gun or was going for a gun. Even though the pat-down was not complete, Defendant Powell was placed in handcuffs and "shuffled out of the way." Officer McGinnis immediately drew his weapon on Defendant Elliot.

Officer McGinnis directed Defendant Elliot to show his hands on several occasions but Defendant Elliot didn't comply. Defendant Elliot's one hand was between the seat and door and while he brought the hand forward, he did not show it. Officer McGinnis asked Defendant Elliot if he had a weapon to which Defendant Elliot responded: "no…the drugs."

In the interim, Officer Samar had called for additional units and Sergeant Taylor also of the South Williamsport Police Department arrived to assist.

Apparently, the passenger door was broken and Defendant Elliot was taken out through the driver's side door, immediately handcuffed, and taken into custody. The police arrested Defendant Elliot was because of his admission that there were drugs in the car. He was searched incident to the arrest. The police found on Defendant Elliot a large

amount of money that was stacked in such a way that it was consistent with drug dealing. After the search, Defendant Elliot was secured in one of the patrol units.

Officer McGinnis then searched Defendant Powell incident to his arrest "for drugs in the car." Officer McGinnis found glassine baggies on Defendant Powell that were stamped "Thunder" and were consistent with heroin.

Both defendants were transported back to police headquarters. A tow truck was called for the vehicle. The tow truck was necessary because both defendants had been arrested, the vehicle could not be legally parked where it had been stopped, there were apparently controlled substances in the car and, although Ms. Connor had indicated that she would come to the scene, she had not yet arrived.

The car was towed to police headquarters and sealed with evidence tape. Officer McGinnis contemplated obtaining a search warrant based upon Defendant Elliot's admission as well as his furtive movements. Soon thereafter, however, Ms. Connor arrived and gave written consent to search the vehicle. The consent to search form was signed and dated by Ms. Connor as well as two witnesses and was admitted as Commonwealth Exhibit 1. Officer McGinnis indicated that no threats, promises or inducements were made to Ms. Connor with respect to her requested consent.

Officer Samar also testified. On February 21, he was working in full uniform and was driving a marked police cruiser. He was dispatched to the scene to backup Officer McGinnis. Upon arriving at the scene, Officer McGinnis asked him to watch the occupants while Officer McGinnis talked with the owner. Upon completing the telephone call with Ms.

Connor, Officer McGinnis advised Officer Samar that he spoke with the owner and that she gave consent to search the vehicle.

Once Officer McGinnis took Defendant Powell out of the vehicle and as he was concluding the pat-down, Officer Samar observed Defendant Elliot turn and look at the officers, reach into the backseat and then pop back up. He then observed Defendant Elliot reach toward the glove box area. Officer Samar was concerned that Defendant Elliot was taking the opportunity to access a weapon. He immediately notified Officer McGinnis, who drew his weapon on Defendant Elliot and immediately directed him to show his hands. Officer Samar grabbed Defendant Powell, walked him to his patrol vehicle, laid him on the hood, and then radioed for backup.

Pending Sergeant Taylor's arrival, Officer Samar held Defendant Powell on the front of the patrol vehicle. He heard Officer McGinnis asking Defendant Elliot if he had a gun.

Both defendants were searched incident to their respective arrests. A "rollback" tow truck was called to the scene and arrived within five to ten minutes.

Once the vehicle was taken to headquarters, Officer Samar began securing it with evidence tape. In plain view between the door and the passenger seat, Officer Samar observed a glassine baggie of heroin.

Shortly thereafter, Ms. Connor arrived. A discussion ensued between Officer McGinnis and Ms. Connor. Officer McGinnis asked Ms. Connor if she still consented to the search. She responded: "Yes, absolutely. I do not want drugs in my car."

After Ms. Connor signed the consent form, they walked to the vehicle. While Officer Samar and Ms. Connor observed, Officer McGinnis searched the vehicle and found among other things controlled substances and drug paraphernalia.

The first issue the court will address is the stop of the vehicle. Defendant Powell argues that it was "patently unlawful", "a ruse and nothing more" and that the proposed justification was "fundamentally ludicrous." While conceding that the case was not controlling, Defendant Powell argued that the court should consider the reasoning and decision in United States v. Chanthasouxat, 342 F. 3d 1271 (11th Cir. 2003). Defendant Powell also referenced the Superior Court case of Commonwealth v. Steinmetz, 656 A.2d 527 (1995).

When a defendant files a motion to suppress challenging the constitutionality of the stop of his vehicle, the Commonwealth bears the burden of proof to show that the defendant's rights were not violated. Pa. R. Cr. P. 581 (H); Commonwealth v. Graham, 554 Pa. 472, 721 A.2d 1075, 1077 (1998); Commonwealth v. Enimpah, 62 A.3d 1028, 1031-1032 (Pa. Super. 2013).

If a police officer is making a traffic stop for an offense where he has a reasonable expectation of learning additional evidence related to the suspected criminal activity, the stop needs to be supported by reasonable suspicion. On the other hand, a vehicle stopped solely on offenses not "investigatable", must be supported by probable cause. Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108, 115-16 (2008); Commonwealth v. Feczko, 10 A.3d 1285, 1290-91 (Pa. Super. 2010).

Here, the basis for the traffic stop was a violation of the Vehicle Code. Accordingly, the applicable standard is probable cause.

"Probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the Defendant has committed it." Commonwealth v. Griffin, 24 A.3d 1037, 1042 (Pa. Super. 2011)(citation omitted). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. Id.

67 Pa. Code § 175.68 clearly requires vehicles to be equipped with at least one rearview mirror. It also requires rearview mirrors on both sides of the vehicle. 75 Pa. C.S.A. § 4534 precludes an individual from operating a motor vehicle if it does not have at least one rearview mirror. 75 Pa. C.S.A. § 4704, permits a police officer to inspect and/or stop a vehicle if that police officer has probable cause to believe that the vehicle or its equipment is unsafe or not equipped as required. The standards set forth in the regulations such as 67 Pa. Code are incorporated into the Vehicle Code pursuant to 75 Pa. C.S.A. §§ 4103, 4521.

Clearly, the law requires that all motor vehicles have a rearview mirror along with two side rearview mirrors. Defendant's vehicle did not have an inside rearview mirror and accordingly it was in violation of the applicable regulations and law. Furthermore, it was unsafe to drive and not equipped as required. Finally, and perhaps determinatively, the facts were such that they at the very least warranted a prudent individual believing that an offense

was committed and that the driver had committed it.

Defendants' reliance on Steinmetz is misplaced. In fact the Steinmetz decision supports the stop in this case. First, it clearly holds that the Vehicle Code requires a vehicle to have a rearview mirror as distinct from side-view mirrors. Secondly, unlike in this case, the officer in Steinmetz had nothing more than a mere suspicion that the Vehicle Code was violated. The officer did not see that the rearview mirror was missing prior to stopping the vehicle. Instead, he saw that the vehicle did not have a side-view mirror and stopped the vehicle to determine whether it had a rearview mirror. Accordingly, the Court held that there were no objective facts to indicate that the car had no rearview mirror.

In this case, the officer clearly observed and credibly testified that the car had no rearview mirror.

Defendant Powell's reliance on Chanthasouxat is also misplaced. Unlike this case in which Pennsylvania law clearly requires a rearview mirror, in Chanthasouxat there was no law or ordinance requiring the rearview mirror to be on the inside of the vehicle. The arresting officer did not have reasonable suspicion or probable cause in that he was mistaken as to the applicable law. The Court specifically concluded that a mistake of law cannot provide reasonable suspicion or probable cause to justify a traffic stop.

The defendants next argue that the search of their persons was unconstitutional. Preliminarily, the court notes that each of the defendants exited the vehicle under different circumstances. Defendant Powell was asked to exit the vehicle. He was frisked and then subsequently searched incident to an alleged lawful arrest. Defendant Elliot

was searched incident to an alleged lawful arrest.

The defendants do not appear to argue that the request to have them exit the vehicle was unlawful. Nonetheless, the Court will address such.

"[P]olice may request both drivers and their passengers to alight from a lawfully stopped car without reasonable suspicion that criminal activity is afoot." Commonwealth v. Brown, 654 A.2d 1096, 1102 (Pa. Super. 1995); see also Commonwealth v. Parker, 957 A.2d 311, 315 (Pa. Super. 2008)("The police officer lawfully pulled [the defendant] over because of a malfunctioning brake light; therefore he also had the right to ask him to step out of the vehicle.").

Here, the request that Mr. Powell exit the vehicle was lawful because as set forth above, the vehicle was lawfully stopped. As well, the subsequent request to have Defendant Elliot exit the vehicle was also lawful.

In connection with the subsequent frisk of Defendant Powell, he argues that there was no evidence whatsoever to even suggest that he was armed and dangerous; accordingly, the frisk was unconstitutional.

> If, during the course of a valid investigatory stop, an officer observes unusual and suspicious conduct on the part of the individual which leads him to reasonably believe that the suspect may be armed and dangerous, the officer may conduct a pat-down of the suspect's outer garments of weapons. In order to establish reasonable suspicion, the police officer must articulate specific facts from which he could reasonable infer that the individual is armed and dangerous. When assessing the validity of [an investigatory] stop, [Pennsylvania courts] examine the totality of the circumstances, giving due consideration to the reasonable inferences that the officer can draw from the facts in light of his experience, *while disregarding any unparticularized suspicion or hunch.*

Commonwealth v. Wilson, 927 A.2d 279, 284 (Pa. Super. 2007) (citations omitted). "In determining whether a pat-down is supported by sufficient articulable basis, the totality of the circumstances must be examined." Commonwealth v. Gray, 896 A.2d 601, 606 (Pa. Super. 2006).

Officer McGinnis testified that because of Defendant Powell's prior drug convictions he believed that Powell could be potentially armed and dangerous. Officer McGinnis stated that he frisked the Defendant for "[his] safety." On cross-examination Officer McGinnis conceded that once Defendant Powell exited the vehicle, he was taken to the rear of the passenger area of the vehicle. Officer McGinnis did not observe any gun or weapon, or any suspicious activity. There also was nothing obvious to indicate that Powell was armed. There was no ammunition, no bulletproof vest and nothing visible to believe Powell was armed. There was no report of any crime in process, and no suspicious gestures or movements.

The Commonwealth argued that the evidence was sufficient to establish reasonable suspicion that Defendant Powell was armed and dangerous. While the Commonwealth conceded that the courts do not permit a "guns follow drugs" presumption, Officer McGinnis knew of the Defendant's drug history and license suspensions, and suspected that Powell was coming from a source city (Philadelphia). Powell also had apparently not picked up the prescription as directed and was not coming from the area where the prescription would have been filled.

The Commonwealth's argument, however, fails because Officer McGinnis did

not testify to those factors. In fact, Officer McGinnis articulated that he believed the Defendant was armed and dangerous only because of his "prior drug convictions." Even assuming that this might be a valid basis, no further evidence was presented with respect to the specifics with respect to said drug convictions.

While certainly a vehicular stop at night "creates a heightened danger that an officer will not be able to view a suspect reaching for a weapon", In the Interest of O.J., 958 A.2d 561, 566 (Pa. Super. 2008), and it is well settled that encounters late at night are "inherently more dangerous" than during the day, Commonwealth v. Austin, 631 A.2d 625, 628 (Pa. Super. 1993), Officer McGinnis failed to articulate specific facts from which he could reasonably infer that Defendant Powell was armed and dangerous. Compare, Wilson, supra.; Parker, supra, Commonwealth v. Mesa, 683 A.2d 643 (Pa. Super. 1996).

While concluding that the frisk of Defendant Powell was unconstitutional, this does not end the inquiry nor automatically result in the relief requested. Indeed, the parties agree that only if each defendant's arrest shortly after the frisk was invalid and unconstitutional, the items seized from the defendants would be inadmissible.

Both defendants claim that there was insufficient probable cause to arrest them on the scene.

In Commonwealth v. Rodgers, 849 A.2d 1185 (Pa. 2004), our Supreme Court held that "the police have probable cause 'where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed.'" Id. at 1192 (quoting Commonwealth v. Gibson,

638 A.2d 203, 206 (Pa. 1994)). Probable cause is determined under a totality of the circumstances standard. Commonwealth v. Martin, 101 A.3d 706, 721 (Pa. 2014). As the parties agree, an arrest must be supported by probable cause. Commonwealth v. Ellis, 662 A.2d 1043, 1047 (Pa. 1995).

Contrary to the defendants' arguments, the court concludes that sufficient probable cause existed for both of their arrests. With respect to Defendant Elliot, he was in a vehicle traveling potentially from a source city for narcotics. The driver of the vehicle had a history of controlled substance convictions. Both occupants apparently resided in the source city, and neither had a valid driver's license. While the driver was being detained by Officer McGinnis, Officer Samar noticed furtive movements by Defendant Elliot. Defendant Elliot appeared to be reaching for something and his hands were hidden. Officer Samar saw Defendant Elliot reach toward the glove box area. He immediately became concerned that Defendant Elliot was in the process of accessing a weapon.

Officer Samar's concern was such that he immediately indicated to Officer McGinnis that Defendant Elliot had a gun or was going for a gun. Officer McGinnis drew his weapon on Defendant Elliot and asked him several times to show his hands. Defendant Elliot failed or refused to show his hands. Officer McGinnis demanded to know if Defendant Elliot was reaching for a weapon to which Defendant Elliot eventually responded "no, the drugs."

Given the totality of the circumstances, the facts known to the officers at the time were sufficient to warrant a prudent person to believe that Defendant Elliot was in possession of controlled substances.

With respect to Defendant Powell, in addition to the facts relating to the failure to have a license, the prior convictions, the potential travel from a source city, and his residence being from the source city, Officer McGinnis was also aware that Defendant Powell apparently lied or was deceptive regarding where he was traveling with another person's vehicle. He did not appear to be traveling to or from the Rite-Aid to obtain any prescription.

The conduct of Defendant Elliot can also be considered. Once Defendant Elliot was arrested and searched, officers found a large sum of money that was "bundled or stacked" consistent with drug dealing. As well, Defendant Elliot admitted that he was reaching for drugs which were in a location in the vehicle to which both the defendants would have access.

Clearly, the facts known to Officer McGinnis were sufficient to warrant a prudent person to believe that Defendant Powell was either jointly or constructively possessing with intent to deliver, delivering and/or simply possessing controlled substances or, in the alternative, was an accomplice of Defendant Elliott.

Because both defendants were lawfully arrested, the search of their persons was lawful and any items seized from their persons will not be suppressed.

Defendants' final argument relates to the search of the vehicle. Defendants contend that the vehicle was illegally impounded and illegally searched.

Impoundment of a vehicle constitutes a seizure subject to the protections of the Fourth Amendment. Commonwealth v. Milyak, 508 Pa. 2, 493 A.2d 1346, 1350 (1985).

Where, however, a warrantless seizure of an automobile occurs after the owner or operator has been placed into custody, where the vehicle is located on public property and where there exists probable cause to believe that evidence of the commission of a crime will be obtained from the vehicle, it is reasonable for constitutional purposes for the police to seize and hold the vehicle until a search warrant can be obtained. Commonwealth v. Holzer, 480 Pa. 93, 389 A.2d 101, 106 (1978); Milyak, supra.

In this particular case, the warrantless seizure of the automobile for impoundment purposes was reasonable and appropriate. The owner had been called and had yet to arrive, no one was available to stay with the vehicle or drive it, the vehicle was in a public roadway disrupting traffic and there was probable cause to believe that evidence of illegal narcotics and/or the distribution of illegal narcotics would be obtained from the vehicle. Accordingly, the police acted properly in impounding the vehicle.

Defendants' final contention is that the search of the vehicle was illegal. Defendants do not dispute that consent to search the vehicle would negate any requirement of obtaining a search warrant. One of the long standing exceptions to the warrant requirement is a valid consent. Commonwealth v. Hughes, 575 Pa. 447, 836 A.2d 893, 900 (2003).

Defendants argue, however, that the consent obtained from the owner of the vehicle was not knowing, intelligent or voluntary.

The Commonwealth bears the burden of showing that the consent to search the vehicle was freely and voluntarily given. Commonwealth v. Maxwell, 505 Pa. 152, 477 A.2d 1309 (1984); Commonwealth v. Parker, 442 Pa. Super. 393, 619 A.2d 735 (1993).

To be effective, consent to search must be voluntarily given with a total absence of duress or coercion, express or implied. Commonwealth v. Harris, 239 A.2d 290, 293 (Pa. 1968); Commonwealth v. Pichel, 323 A.2d 113 (Pa. Super. 1974).

> No one factor is determinative in a voluntariness inquiry….It is only by analyzing all of the circumstances of an individual consent that it can be ascertained whether in fact it was voluntary or coerced. It is this careful sifting of the unique facts and circumstances of each case that is evidenced in our prior decision involving consent searches.

Commonwealth v. Lowery, 451 A.2d 245, 248-49 (Pa. Super. 1982)(citation omitted). In evaluating the voluntariness of a custodial consent, the courts have sensibly looked at a variety of factors which indicate a voluntary decision. Commonwealth v. Dressner, 336 A.2d 414, 416 (Pa. Super. 1975).

Given the testimony in this case, the court finds that the Commonwealth has met its burden of proving that the consent was freely and voluntarily given. When Ms. Connor was first called by Officer McGinnis she inquired as to the circumstances and specifically permitted him to search the vehicle because she did not want drugs in her car. Eventually, Ms. Connor arrived at headquarters. Again, the question of consent arose. There were no threats, coercion, pressure or any attempt by law enforcement officers to have her consent unless it was fully voluntary. She reviewed and signed the consent form in the presence of two witnesses and confirmed that the consent to search was signed knowingly, intelligently and voluntarily without any threats or promises of any kind.

ORDER

AND NOW, this ____ day of January 2015, following a hearing and the

submission of written argument on behalf of the parties, with respect to Defendant Elliot, the court **DENIES** his motion to suppress.

With respect to Defendant Powell, the court **DENIES** his motion to suppress.

The court **GRANTS** Defendant Powell's motion for criminal history information. The Commonwealth shall provide any promises of immunity, leniency or any preferential treatment as well as criminal history of its witnesses to defense counsel within thirty (30) days of the date of this Order, if it has not already done so.

The court also **GRANTS** Defendant Powell's motion with respect to Pa.R.E. 404 (b). The Commonwealth shall provide any 404 (b) notices to defense counsel by the date of the pretrial, unless the reason for such was discovered afterwards.

The court **GRANTS** in part and **DENIES** in part Defendant Powell's motion for formal discovery. The Commonwealth shall provide to Defendants a copy of its expert's written report, but if there is no report, it shall provide to Defendants no later than the date of the pretrial the expert's name, business address and a written summary of what the expert will testify to (his conclusions) as well as the factual basis for said conclusion including any and all facts relied upon in support of said conclusions.

Finally, the Court **GRANTS** Defendant Powell's motion to reserve right. Defendant Powell may file any additional pretrial motions within thirty (30) days of the date

he receives additional discovery but said motions must relate only to such additional discovery.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Ken Osokow, Esquire (ADA)
Kirsten Gardner, Esquire (counsel for Defendant Elliot)
E.J. Rymsza, Esquire (counsel for Defendant Powell)
Work file
Gary Weber, Lycoming Reporter